

P. E. MYERS & ASSOCIATES
Practice Before The Interstate Commerce Commission
SUITE 348. PENNSYLVANIA BUILDING
PENNSYLVANIA AVENUE AT THIRTEENTH STREET N. W.
WASHINGTON, D. C. 20004

(202) 737-2188

January 14, 1981

Registered Practitioners

PAULINE E. MYERS
MARK D. RUSSELL

12771
RECORDATION NO. _____ Filed 1428

JAN 14 1981 -1 40 PM

No. 1-0144-184
Date JAN 14 1981
Fee \$ 50.00

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Attention: Recordation Office

In Re: Mortgage of Railroad Cars
Between GWI Leasing Corporation
And Marine Midland Bank

Dear Mrs. Mergenovich:

Attached hereto for recordation is an original and duplicate copy of the above noted Mortgage between:

GWI Leasing Corporation
71 Lewis Street
Greenwich, CT 06830

And

Marine Midland Bank, N.A.
One Marine Midland Plaza
Rochester, NY 14639

RECEIVED
JAN 14 1 34 PM '81
I.C.C.
FEE OPERATION BR.

A check, No. 2801 in the amount of \$50.00 payable to the Interstate Commerce Commission is hereby enclosed covering the filing fee. Your cooperation in this matter is greatly appreciated.

Yours very truly,

Pauline E. Myers
Pauline E. Myers

PEM/slt

Enclosures

Gene Plator

Interstate Commerce Commission

Washington, D.C. 20423

1/14/80

OFFICE OF THE SECRETARY

Pauline E. Myers

P.E. Myers & Assoc.

Suite 348, Pennsylvania Building

Pennsylvania Avenue At Thirteenth Street N.W.

Washington, D.C. 20004

Dear **Ms. Myres:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/14/80** at **1:40pm**, and assigned re-recording number(s). **12771**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

JAN 14 1981 -1 40 PM

MORTGAGE OF RAILROAD CARS

INTERSTATE COMMERCE COMMISSION

THIS MORTGAGE, made as of this 23rd day of *December*, 1980, by and between GWI Leasing Corporation, Mortgagor, a Delaware corporation with its office and principal place of business at ^{71 LEWIS STREET} ~~270 Greenwich Avenue~~, Greenwich, Connecticut 06830, and Marine Midland Bank, N.A., Mortgagee, a national banking association with an office for the transaction of business at One Marine Midland Plaza, Rochester, New York 14639.

WHEREAS, pursuant to the terms of a certain Promissory Note dated December 15, 1978 (herein called the "Promissory Note"), the Mortgagee lent to the Mortgagor the principal amount of Five Million Two Hundred Forty Thousand Dollars (\$5,240,000); and

WHEREAS, pursuant to the terms of a certain Mortgage of Railroad Cars dated as of January 10, 1979 (herein called the "Initial Mortgage"), the Mortgagor, as collateral security for the payment of the indebtedness evidenced by the Promissory Note, granted to the Mortgagee a continuing lien on certain railroad cars; and

WHEREAS, subsequent to the execution of the Initial Mortgage, five of the railroad cars encumbered by the Initial Mortgage (herein called the "Destroyed Cars") were totally destroyed and removed from service.

W I T N E S S E T H:

That, in lieu of all rights in the Destroyed Cars granted to the Mortgagee pursuant to the terms of the Initial Mortgage, the Mortgagor does hereby grant, bargain, sell and release unto the Mortgagee, its successors and assigns forever, all and singular, the following described properties, rights and interests and all of the estate, right, title and interest of the Mortgagor in the railroad cars and other properties described in Schedule A, annexed hereto, whether now owned or hereafter acquired, together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the railroad cars described in Schedule A hereto, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of and additions, improvements, accessions, and accumulations to any and all of said railroad cars, including all additions thereto which are now or shall hereafter be incorporated therein, together with all the rents, issues, income, profits and avails thereof, all of which railroad cars, other properties, rights and interests hereby transferred, conveyed and mortgaged or intended so to be are herein referred to as the "Cars".

SUBJECT, HOWEVER, to all the right, title and interest of Genesee and Wyoming Railroad Company in and with respect to the Cars arising under that certain railroad car use Agreement, dated

as of December 11, 1979, between said Genesee and Wyoming Railroad Company and GWI Rail Management Corp. as agent for Mortgagor and for certain other principal owners.

TO HAVE AND TO HOLD the above granted and described property unto the Mortgagee, its successors and assigns forever.

PROVIDED, ALWAYS, and upon the express condition that if the Mortgagor, its successors and assigns shall, while no default exists under any of the provisions of Article I of the Promissory Note, well and timely pay or cause to be paid to the Mortgagee, its successors or assigns, the above-mentioned sum of Five Million Two Hundred Forty Thousand Dollars (\$5,240,000), the indebtedness incurred under the Promissory Note, with all interest thereon and any and all additional sums payable under the provisions of the Promissory Note and of the Initial Mortgage and of this Mortgage, all in accordance with the terms thereof, then this Mortgage shall be void, otherwise to remain in full force and effect. If such payment in full is made by the Mortgagor while any such default exists and all such defaults are subsequently corrected by the Mortgagor, the Mortgagor shall be entitled to have this Mortgage discharged. This Mortgage is given and intended as a collateral and continuing security for the payment of the indebtedness described in the next preceding paragraph incurred, or to be incurred by the Mortgagor to the Mortgagee whether such indebtedness shall at any time or from

time to time have been reduced or paid in full and thereafter increased or reincurred and whether such indebtedness may at any time or from time to time exceed the total obligations incurred by the Mortgagor under the Promissory Note, and no renewal of, or extension of time of payment of, the obligation or evidence of the indebtedness or any part thereof, and no agreement not to sue or release or discharge of any persons liable therefor or thereon, or release or exchange of other collateral or any act or thing whatsoever, save payment as provided in the next preceding paragraph of this Mortgage, shall diminish, discharge, impair or affect this Mortgage or the lien thereof or the security afforded thereby.

AND, the Mortgagor covenants with the Mortgagee that upon the happening of any Event of Default, as defined in Article IV of the Promissory Note, the Mortgagee's rights and remedies with respect to the Cars shall be those of a secured party under the Uniform Commercial Code and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted herein. Without in any way requiring notice to be given in the following manner, the Mortgagor agrees that any notice by the Mortgagee of the sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to the Mortgagor if such notice is

mailed by certified or registered mail, postage prepaid, at least ten (10) days prior to such action, to Mortgagor's address specified above, att'n: President. The Mortgagor agrees to give such further notice of any sale or other disposition to any other person or corporation or to the public generally as it may believe desirable or as may be required by law. The proceeds of any sale, or other disposition after deduction of all expenses of the taking, keeping and sale of the Cars including without limitation any and all expenses incurred by the Mortgagee in any legal proceeding which it may institute for the recovery and possession of such Cars shall be applied to the payment of the indebtedness hereby secured and the Mortgagor agrees to pay any deficiency. The Mortgagee may purchase at any such sale in the same manner and to the same effect as a person not interested therein. In no event shall the Mortgagee be required to have the Cars present at the place of sale or comply with any other provisions of law respecting foreclosure of liens either in the State of New York or elsewhere.

The Mortgagee is hereby appointed attorney-in-fact of the Mortgagor with full power of substitution to execute and deliver to any purchaser aforesaid, and is hereby vested with full power and authority to make, in the name and on behalf of the Mortgagee, a good conveyance of the title to each of the Cars so sold. In the event of any sale of any of the Cars, under any

power herein contained, the Mortgagor will, if and when required by the Mortgagee, execute such form of conveyance of the Cars as the Mortgagee may direct or approve.

PROVIDED, HOWEVER, that the Mortgagor and the Mortgagee hereby expressly agree that the destruction and removal from service of the Destroyed Cars, and all acts or omissions to act by the Mortgagor in any way connected therewith or in respect thereof, shall not result in the acceleration, under the terms of the Promissory Note, of all or any portion of the remaining unpaid principal balance (together with any accrued and unpaid interest thereon) of the Promissory Note, nor shall such destruction or removal from service or any such act or omission of the Mortgagor constitute an Event of Default within the meaning of Article IV of the Promissory Note, and the Mortgagee hereby expressly waives any and all rights which it may have, under the Promissory Note or under the Initial Mortgage or otherwise, in the event of a default, which rights are in any way connected with or in respect of such destruction or removal from service or any such act or omission of the Mortgagor.

This Mortgage and all covenants, powers and rights herein contained shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

The terms of this Mortgage and all rights and obligations hereunder shall be construed and interpreted in accordance with the laws of the State of New York in which state it has been executed and delivered.

IN WITNESS WHEREOF, each of the parties hereto has caused this instrument to be signed by its duly authorized officers and its corporate seal to be hereunto affixed as of the day and year first above written.

GWJ LEASING CORPORATION

(Corporate Seal)

By: Edward A. Stenhouse
President

ATTEST:

M. M. B. Sullivan
Secretary Vice President

MARINE MIDLAND BANK, N.A.

(Corporate Seal)

By: W. B. Boyle
Vice President

ATTEST:

Asst. Secretary

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) SS:

On this 30th day of DECEMBER, 1980, before me personally came EDWARD J. STEWART, III, to me personally known, who being by me duly sworn, says that he resides at New CANAAN, in the COUNTY of FAIRFIELD, New York; that he is the President of GWI Leasing Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Gretchen M. Koopman

GRETCHEN M. KOOPMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1985

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 23rd day of December, 1980, before me personally came Emmett B. Boylan, to me personally known, who being by me duly sworn, says that he resides at of , New York; that he is a Vice President of Marine Midland Bank, N.A., the national banking association described in and which executed the above instrument; that he knows the seal of said association; that the seal affixed to said instrument is such seal; that it was so affixed by order of the Board of Directors of said association, and that he signed his name thereto by like order.

W. Reynolds Bowers

W. REYNOLDS BOWERS
NOTARY PUBLIC, State of N.Y., Monroe County
My Commission Expires March 30, 1981.

SCHEDULE A

five 100-Ton, 4750 Cubic Feet Capacity, Covered
Hopper Railroad Cars, manufactured by Pullman
Standard, a division of Pullman Incorporated

serial nos. GNWR	510001
	510002
	510004
	510007
	510009